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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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In the Matter of	)	
MCI Telecommunications Co., Inc.	)	
Petition for Expedited Declaratory Ruling Preempting Arkansas Telecommunications Regulatory Reform Act of 1997 pursuant to Sections 251, 252 and 253 of the Communications Act of 1934, as amended	)	CC Docket No. 97-100

COMMENTS OF THE

COMPETITION POLICY INSTITUTE

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July 7, 1997

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SUMMARY

The State of Arkansas has enacted a strongly anti-consumer and anti-competitive telecommunications statute. The new law deregulates monopoly telephone services, provides an anti-competitive assured revenue stream for incumbent telephone companies, and limits the ability of the Arkansas PSC to protect consumers and enhance competition. The Arkansas statute conflicts with both the letter and the spirit of the federal Telecommunications Act of 1996.

However, the FCC does not have the authority to preempt a state statute simply because it implements bad public policy. The FCC's authority to preempt is limited by the provisions of the Telecommunications Act and by controlling Supreme Court precedent. The question raised by MCI's petition, and by the earlier petition of ACSI, is whether the Arkansas statute falls within one of the permissible legal grounds for preemption.

After reviewing the Arkansas Act and the FCC's preemption authority, CPI reaches the following conclusions:

1) The provision in section 9 of the Arkansas Act, which prohibits resale of promotional prices and packaged services, violates Section 253 of the Communications Act because the provision effectively prevents competitors from offering resale services, one of the three modes of market entry specified in the federal act. The FCC should preempt this provision of the Arkansas Act.

2) The FCC should preempt two additional provisions of the Arkansas Act: the FCC should preempt section 5(d) (which requires that the incumbent telephone company in rural areas shall be the only recipient of <u>federal</u> and state universal service funds), and section 9(b) (which prohibits a government entity from providing telephone service).

3) CPI does not support, at this time, the petitioners' request that the FCC assume responsibility over arbitration proceedings. Instead, the FCC should monitor related decisions of the Arkansas Public Service Commission to determine whether they are *de facto* barriers to entry.

4) It is premature to preempt the provisions of the Arkansas Act concerning the standard for reviewing SGATs and negotiated agreements. The FCC should reserve the right to preempt these sections if their implementation has the effect of prohibiting competition or conflicts with federal law.

COMMENTS OF THE
COMPETITION POLICY INSTITUTE

I. INTRODUCTION

The Competition Policy Institute (CPI) hereby submits comments on the Petition for Expedited Declaratory Ruling filed by MCI on June 3, 1997.[1] CPI is an independent, non-profit organization that advocates state and federal policies to promote competition for telecommunications and energy services in ways that benefit consumers. CPI believes that competition will lead to lower prices, greater infrastructure development, new services, and more choices for consumers of telecommunications services.

MCI's Petition for Expedited Declaratory Ruling, like ACSI's earlier Petition, brings to the Federal Communications Commission (FCC or Commission) another example of a state or municipal regulation that may severely restrict the growth of local telephone competition. CPI believes that state and local governments have a significant and legitimate role to play in the growth of local telephone competition. CPI is greatly concerned, however, that actions by certain municipal and state policy-makers, such as the enactment of the Arkansas Act, extend well beyond the scope of their authority and threaten to stymie the growth of competition for local telephone services. If left unchecked, such actions by states and local governments can retard the growth of competition, perpetuate high telephone rates and limit

[1]Comments were requested by the FCC pursuant to the Public Notice issued June 6, 1997 (DA 97-1190).

choices for consumers, thereby thwarting the intent of Congress in enacting the Telecommunications Act of 1996.

Before addressing the merits of the Arkansas Act, it is important to consider the context in which the Arkansas Act was passed and signed into law. The legislation was introduced in both the House and the Senate of the Arkansas General Assembly in mid-January 1997 with a majority of the Members of both the Senate and House as co-sponsors. The legislation was immediately endorsed by the Arkansas Telephone Association. The leadership of the Arkansas legislature indicated that they would move forward on the legislation without hearings. After objections from opponents, the Arkansas Senate and House each held brief hearings on January 23 and 24, 1997. CPI wrote to each member of the Arkansas legislature prior to the hearing to express its concerns over the pending bill.[2] The *Arkansas Democrat-Gazette* criticized the Arkansas legislature for rushing to pass an industry-sponsored piece of legislation.[3] Nevertheless, the General Assembly passed the bill immediately after the hearings. The bill was signed into law on February 4, 1997, less than three weeks after it was introduced.

The Arkansas Act is one of the most anti-consumer and anti-competitive state telecommunications statutes in the country. The legislation requires that many rates for monopoly telephone services be deregulated, insures the incumbent

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[2]The CPI analysis that was sent to the Members of the Arkansas General Assembly is attached as Appendix A.

[3]A copy of *Arkansas Democrat-Gazette* editorial is attached as Appendix B.

telephone companies against any loss of revenue from changes in the federal support mechanisms by allowing them to automatically increase their withdrawals from state funds or increase consumer rates, and limits the authority of the Arkansas Public Service Commission to implement new rules to promote competition.

While many of these provisions will harm the interests of consumers, the FCC is not empowered to preempt the Arkansas Act simply because it implements bad public policy. In general, the State of Arkansas has the authority to determine how intrastate telephone services will be regulated and how the state universal service program shall be implemented. The FCC's preemption authority is constrained by the terms of the federal act and by controlling case law.

In addressing subjects contained in the federal legislation, the drafters of the Arkansas Act attempted to avoid direct conflicts with the federal act. The Arkansas Act attempts to shape the enforcement of the federal act by altering its standards, adding requirements, and adopting rules different than the rules adopted by the FCC. In the guise of implementing the federal act, the Arkansas Act attempts to guide the state implementation toward a result that will be much more favorable to the interests of the incumbent local telephone companies than the FCC's rules.

II. THE FCC SHOULD PREEMPT THREE PROVISIONS OF THE ARKANSAS ACT.

Despite the efforts of the drafters to avoid direct conflicts with federal law, some provisions of the Arkansas Act are so clearly in conflict with the federal legislation, and so clearly operate as barriers to entry, that the FCC must preempt. In these cases, it would be impossible for the Arkansas PSC to enforce the provisions of the Arkansas law without violating the federal law.[4] Some of these provisions have been raised in the petitions by MCI and ACSI, while others have not. The provisions the FCC should preempt are as follows:

A. The last sentence of section 9(d), which prohibits promotional prices, service packages, trial offerings or temporary discounts offered by the ILEC from being available for resale, should be preempted.

The federal act permits no exception to the requirement in section 251(c)(4) that the incumbent local exchange carrier (ILEC) must "offer for resale at wholesale rates any telecommunications service that the carrier provides at retail to subscribers". Yet the last sentence of section 9(d) of the Arkansas Act explicitly provides that "promotional prices, service packages, trial offerings, or temporary discounts offered by the local exchange carrier to its end-user customers are not required to be available for resale."

As the FCC noted in its Local Competition Order, this exception could effectively prevent any resale at all, as the ILEC will shift all of its basic service offerings into one of the permitted categories in order to avoid making its service

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[4]See, Comments of the Arkansas Attorney General, in which he claims that "ACSI bears the burden of demonstrating that there is no possible way for [the Arkansas Act] to be applied without having the effect of prohibiting it from providing any intrastate telecommunications service." p. 16. CPI agrees that those seeking preemption bear a burden. But the petitioners need not show that they cannot provide "any intrastate service". Preemption under section 253(a) is required as long as the regulation "may" prohibit "any" single service.

available for resale.[5] The failure to permit resale of these services effectively prohibits competitors from offering one of the three modes of competition permitted by the federal act. This provision thus constitutes a violation of section 253(a)[6] of the Communications Act and is not "saved" by any exception contained in section 253(b).[7]

B. Section 9(b), which prohibits any governmental entity from providing basic local exchange service, is an explicit barrier to entry that violates section 253(a).

Section 9(b) states that "a government entity may not provide, directly or indirectly, basic local exchange service." This is the same type of entry barrier that the FCC has already preempted in the Classic and the Connecticut payphone cases. Section 253(a) clearly applies to regulations that prohibit "any entity" from providing service. Section 253(b) allows states to impose conditions on entry only if

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[5]See, First Report and Order, Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, CC Docket No., 96-98 (Aug. 8, 1996) ("Local Competition Order")

[6]Section 253(a) is a broad provision that forbids any provision that "may" prohibit or have the effect of prohibiting any entity from providing "any interstate or intrastate service." The use of the verb "may" allows the FCC to make a predictive judgment of the effect of the provision in the future. Given that Congress identified service resale as one of the three modes of competitive entry, the FCC should be especially vigilant in ensuring that resale competition is permitted to develop as Congress intended.

[7]Section 253(b) allows a state to protect a provision that otherwise violates subsection (a) if it imposes competitively neutral requirements that serve certain universal service and public welfare goals. Exemptions such as this typically allow ILECs to provide discounted services to large businesses who do not need universal service support. In addition, the exemption provision is not competitively neutral because no reseller would be able to offer the same discount as the ILEC. Thus, section 253(b) does not apply to this provision.

they are imposed in a "competitively neutral" manner, and if they meet all the other requirements of that subsection. Clearly, a statutory provision is not competitively neutral if it bars one type of entity from providing competitive service altogether.

C. The first sentence of section 5(d), which permits only the rural telephone company to be eligible for universal service funding from both the state and the federal funds, is an explicit entry barrier under section 253(a) and violates the competitively neutral standard of section 253(b).

Section 5(d) effectively prohibits competitors from providing service in areas served by rural telephone companies. By expressly permitting the incumbent local telephone companies to receive universal service funding but barring any competitor from receiving such funding, this section of the Arkansas Act makes it impractical for competitors to provide service in these areas. All rural telephone companies in Arkansas are eligible for universal service funding. To require by legislation that one carrier and no other shall receive subsidies is fundamentally at odds with the spirit and language of the federal act.

Even if Arkansas has unlimited authority to adopt rules governing the distribution of intrastate funds, nothing in the Communications Act gives the State the authority to restrict eligibility to the federal fund to one carrier alone. In fact, the provisions of section 214(e) explicitly recognize that a state commission "may, in the case of an area served by a rural telephone company . . . designate more than one common carrier as an eligible telecommunications. . . so long as each additional requesting carrier meets the requirements of paragraph (1)" and meets a public interest test. In other words, each state PSC must undertake a public interest examination to determine, on a case-by-case basis, whether a carrier in a rural area can be eligible for universal service support. The Arkansas Act bypasses this process altogether by ruling out the possibility that anyone other than the incumbent rural LEC could receive universal service funds.

The blatantly discriminatory provision applies to both the state and federal universal service funds, is a barrier to entry under section 253(a) and is not competitively neutral under section 253(b). For these reasons, the FCC must preempt this provision under section 253(d).

III. THE FCC SHOULD RESERVE JUDGMENT ON OTHER PROVISIONS OF THE ARKANSAS ACT.

MCI and ACSI raise several additional provisions that they argue should be preempted. In particular, MCI questions several universal service provisions. Both ACSI and MCI request that the FCC assume the responsibility for arbitrations and reviewing statements of generally available terms and conditions (SGATS) and negotiated agreements because the Arkansas Act has so constrained the discretion of the Arkansas PSC.

Many of the provisions of the Arkansas Act implement fundamentally bad public policy. To provide incumbent telephone companies with a guaranteed revenue stream and to base universal service payments on the carrier's embedded costs unjustifiably rewards monopoly telephone companies for making excessive investments.

Nonetheless, the FCC's authority to preempt is limited by the federal act and by Supreme Court precedent. The FCC should use such authority sparingly; in general, states should determine what is in the best interests of their consumers as long as they implement federal law.

For the FCC to assume the regulatory responsibilities of the Arkansas PSC is not warranted at this time. Whether the provisions that MCI and ACSI constitute barriers to entry under section 253 or are inconsistent with the federal act cannot be determined until they are enforced. The Arkansas PSC is now faced with the difficult decision of whether to follow the provisions of the Arkansas law or the federal act in places where they conflict. It would be premature for the FCC to assume that the Arkansas PSC will ignore the federal act altogether.

Furthermore, while the Arkansas Act limits the scope of the Arkansas PSC's activities, the Arkansas Act does not attempt to strip the PSC of its authority to implement the federal Telecommunications Act. Unless there is a showing that the PSC has failed to implement the federal act, or has failed to take any action at all concerning an arbitration, negotiated agreement or SGAT, it would be premature for the FCC to assume the PSC's authority.

For example, the Arkansas Act prevents the Arkansas PSC from requiring any more unbundling than is required by the federal act. While MCI argues that this limitation is a barrier to entry that should be preempted, the Arkansas Attorney General points out that the Arkansas PSC has ordered Southwestern Bell Telephone Company to unbundle at least one item (unused transmission media) that was not specifically required by the FCC's rules or the federal act.[8] Further, even if the Arkansas PSC does limit itself to requiring unbundling of only those items required by the FCC, it is not clear whether this limitation, while bad policy, will constitute an entry barrier or a conflict with federal law.

ACSI and MCI also ask the FCC to take over the functions of the Arkansas PSC because the Arkansas law changes the standard under which the PSC must approve negotiated interconnection agreements and statements of generally available terms and conditions (SGATs). In this case, the standard required by the Arkansas Act clearly differs from the standard set forth in the federal act. Under the federal act, the state PSC "may not approve [an SGAT] unless such statement complies with subsection (d) of this section and section 251 and the regulations thereunder." Under the Arkansas Act, the PSC "shall approve any [SGAT] unless it is shown by clear and convincing evidence that the . . . [SGAT] does not meet the minimum requirements of Section 251 of the Federal Act."

As MCI points out, the Arkansas Act differs from the federal standard in several ways. The federal act presumes the SGAT is not acceptable, while the Arkansas Act presumes the SGAT is acceptable. The Arkansas Act adds the phrase "by clear and convincing evidence", which does not appear in the federal act. Finally, the Arkansas Act only requires adherence to the requirements of section 251 of the federal act, while the federal act requires compliance with section 252(d),

[8]See, Comments of the Arkansas Attorney General, p. 10.

section 251 and the regulations thereunder.

While the standard in the Arkansas Act is clearly different from the standard for approval in the federal act, it is not clear at this time how significant the difference will be. First, it is unclear which standard the Arkansas PSC will enforce. To the extent the federal act requires one standard while the Arkansas Act requires another, the Arkansas PSC must decide which standard it chooses to enforce. Whether the federal law takes precedence over the state law is a legal issue that the PSC must address.[9] Second, it is difficult to know at this time what practical difference there will be between the two standards. The PSC may find that, in practice, the two standards are the same. In other words, the PSC may find that an SGAT that does not satisfy the federal standard also does not satisfy the state standard, and that an SGAT that meets the federal standard also meets the state standard.

In short, the FCC should closely monitor the activities of the Arkansas PSC to determine whether it is implementing the federal act correctly. The FCC should reserve judgment concerning the PSC's activities until it can be determined whether these provisions and actions of the PSC have the effect of prohibiting competition or violate federal law.

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[9]As the Arkansas Attorney General pointed out, and as noted earlier in these comments, the PSC appeared to follow the federal law rather than the Arkansas law with regard to the unbundling of unused transmission media.

CONCLUSION

The State of Arkansas has enacted a strongly anti-consumer and anti-competitive statute. The FCC's authority to preempt state actions, however, is strictly limited under the law. The FCC should only preempt a state statute when it would be impossible to enforce the statute consistent with federal law. Under this approach, the FCC should preempt the following three provisions of the Arkansas Act because they directly conflict with the federal law: 1) the exemption of promotional prices and offerings from the resale pricing standards in the federal act; 2) the requirement that only the incumbent local telephone company can receive universal service funds in rural areas, and 3) the provision that bars municipally-owned entities from competing for local telephone service.

The legality of many other provisions of the Arkansas Act raised by MCI and ACSI depend upon their enforcement. While CPI disagrees with the policy implications of these provisions, the FCC should reserve judgment on whether these provisions qualify for FCC preemption until it can be determined whether the enforcement of these provisions has the effect of prohibiting competition or conflicts with the federal statute.

Respectfully Submitted,

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July 7, 1997

APPENDIX A

CPI Competition Policy Institute

MEMORANDUM January 23, 1997

TO: MEMBERS OF THE ARKANSAS GENERAL ASSEMBLY

FROM: Competition Policy Institute [1]

RE: Pending Telecommunications Legislation in Arkansas

The Competition Policy Institute (CPI) has analyzed the "Telecommunications Regulatory Reform Act of 1997" recently introduced in the Arkansas General Assembly. CPI believes that the legislation will result in one of the most anti-consumer and anti-competitive statutes in the country. The legislation would allow monopoly local telephone companies to raise their rates for basic telephone services and would impose significant and unnecessary burdens on potential competitors. Furthermore, several provisions of the legislation violate the Federal Telecommunications Act of 1996 and are inconsistent with federal rules. If this legislation is enacted, these provisions are likely to be preempted by the Federal Communications Commission (FCC).

Some of the most serious problems with the legislation are as follows:

* Rate Increases for Basic Telephone Service. The legislation would allow local telephone companies to raise rates for basic telephone service. Section 12(c) allows rural telephone companies to raise rates for basic local exchange services after 60 days' notice unless at least 15% of consumers sign a petition within 60 days of the notice period. Furthermore, if the Public Service Commission adopts a "benchmark" price to determine universal service support, all local telephone companies will automatically be allowed to raise their rates to that benchmark.

* Monopoly Services Deregulated. Section 7(d) allows the rates for basic local telephone service to be deregulated as soon as one competitor is providing either basic telephone service or switched access service within the service area. In other words, once a single competitor provides switched access service to a single long distance company, the incumbent telephone company can avoid any regulatory review of its local telephone rates and its switched access rates. Other services can be deregulated at the option of the local telephone company, regardless of whether it faces any competition at all.

* Barriers to Competition. The legislation imposes a number of barriers to the entry

[1] CPI is an independent, non-profit organization that advocates state and federal policies to bring competition to telecommunications and energy markets in ways that benefit consumers. CPI receives funding from new entrants in the local telecommunications market and is advised by a committee of state and national consumer advocates.

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of competitors for local telephone services that could have the effect of prohibiting competition altogether. For instance,

- Competitors Must Pay Excessive Rates to Use the Telephone Company Network. The legislation requires the incumbent local telephone company to offer unbundled network elements at prices reflecting their "actual" costs, an embedded cost approach that has been rejected by the FCC and the 31 states that have established these prices so far.

- The Costs of Telephone Company Investments are Imposed on Competitors. The legislation guarantees that telephone companies will be able to recoup any lost revenue from regulatory changes from the universal service fund. Competitors will be required to pick up at least some of these costs because they contribute to the universal service fund, in addition to the amounts they pay the telephone companies for use of their facilities.

- No Competitors May Receive Universal Service Fund Support in Rural Areas. Section 5(d) allows only one carrier, the incumbent telephone company, to be eligible for universal service support in areas served by rural telephone companies.

* Guaranteed Recovery of Embedded Costs. Section 4(e)(5) requires the Public Service Commission to base all high cost funding on the carriers' embedded investment and expenses. This guarantees that the carrier will be allowed to recover all of its investments and expenses even if they are imprudent and inefficient.

Although the legislative findings endorse the goal of promoting competition, **the overall effect of the legislation would be to strengthen the monopoly over local telephone service maintained by Southwestern Bell Corporation (SBC) and the other local telephone companies in Arkansas.** CPI believes that potential competitors are unlikely to enter the Arkansas market under the discriminatory terms of this legislation. This means that telephone rates would be deregulated before consumers have realistic choices for telephone services. In the short run, consumers are likely to suffer higher rates as a result of this legislation. In the long run, Arkansas consumers will lose the advantages that competition brings to the market, advantages such as greater infrastructure investment, new and better services, improved service quality, and lower prices.

Finally, passage of the legislation raises issues concerning SBC's ability to obtain FCC approval to provide interLATA long distance service in Arkansas. Under the Federal Act, SBC must demonstrate to the FCC that it has opened its network to competitors in that State and that approval of the application is in the public interest before being allowed to provide interLATA long distance service. The legislation appears to be inconsistent with the conditions that SBC must show prior to receiving authority to provide interLATA service.

For all these reasons, CPI respectfully recommends that the Members of the Arkansas General Assembly vote against the telecommunications legislation.

APPENDIX B

EDITORIALS

Hold the phone

Why rush telecom legislation?

THAT SOUND you hear in the distance is the whistle of an oncoming and maybe unstoppable freight train-and-telecommunications bill. Guess who's tied to the tracks? Right: The people of Arkansas.

Welcome to the 81st General Assembly Line.

Yep, the Great TeleDebate among legislators, interested parties with vested interests, and the usual concerned citizens originally scheduled for this legislative session seems to have been settled instead by . . . lobbyists. How convenient. Especially for those who have the best lobbyists, or the most.

All that remains are the formalities. First comes the rubber stamp from the Ledge—more than half of the legislators already have signed on as sponsors—and then the governor puts his Mike Huckabee on the dotted line. Arkansas' ratepayers will find out what's happening in due time—when the bill arrives. No sense in worrying our pretty little heads about such complicated matters now. That's what we have lobbies for. And a compliant legislature.

Excuse us, fellas, but may we go on record as saying: *Wait just a dad-blamed minute here.*

Somebody's got some explaining to do. A lot of us were hoping the explanations would come from the 135 public servants elected to Arkansas' legislature. Instead, this morning's meeting of the Senate committee on insurance and commerce looks more like Last Act than Step One. Mainly because the glittering galaxy of lobbyists who orbit the Capitol seems to have already fought this one out. And the winner is: Southwestern Bell, Alltel and two dozen other very much interested companies.

The bill sponsored by the Arkansas Telephone Association, aka the Telecommunications Regulatory Reform Act of 1997, has 27 sponsors in the Senate and 66 in the House. Folks, those tracks have been greased better'n a cast-iron skillet.

If today's committee meeting in the Senate and tomorrow's in the House go as meticulously planned, it's possible that Governor Huckabee could have a telecommunications bill complete with emergency clause on his desk and ready to be automatically signed by c. of b. Friday. The bill could be in effect before the ink on his signature dries.

Whew. Once again ol' Spider Rowland's classic hope sounds more like desperate prayer. Mr. Rowland was the newspaperman who famously suggested that, rather than have the Ledge convene for 60 days every two years, it meet for two days every 60 years. It has became obligatory, and, alas, natural, to quote his line during every session of the General Assembly. It seems to occur earlier every biennium.

DO THE people of Arkansas know what this telecom bill is all about? Do the legislators, even some of those who co-sponsored the legislation, know what this bill is all about?

Just curious. Because we've been cramming for this test for over a week now, and we're still not sure of the difference between the "Arkansas IntraLATA Toll Pool" and the "Arkansas Intrastate Carrier Common Line Pool." Are you, Senator Hopkins? Senator Argue? Senators Bearden, Bell, Canada, Dowd, Edwards . . .? How about you, Representative Beatty? And you, Representatives Thicksten, Capps, Cunningham . . .? Because you have lent your good names to this bill. And, one hopes, your attention.

The line-up is easy enough to un-

The problem is, whichever piece of propaganda a fellow's last read, he's likely to agree with. Sometimes information can be the enemy of understanding. (See some of the so-called conversations on the Internet.)

How complicated is all this stuff? Well, for a warm-up, try setting your VCR for delayed record after doing your taxes. Call it teleconfusion. Or to quote one of the Senate's more discerning members, Mike Beebe of Searcy: "I think there's some merit in both sides of the danged argument. But whatever we do, we have to protect the ratepayers. Our job is to minimize the hurt and protect the ratepayers who can't protect themselves."

That's about the simplest, most sensible advice we've heard yet in all this hullabaloo. Not so incidentally, Senator Beebe is *not* one of the sponsors of the telecommunications bill.

THE STORY began when President Clinton signed the Telecommunications Act of 1996, essentially deregulating the industry. The states were left to work out the details. State agencies like Arkansas' Public Service Commission have to oversee the changes. (Gosh, what a good idea. Why don't we let it? We pay these folks to make decisions just like this.)

Here's the biggest change being proposed: Long-distance companies like AT&T would be allowed to offer local service the way Southwestern Bell does. Naturally, all the phone companies want (a) to protect their turf while (b) not scaring off customers with outlandish rate increases. And naturally there are disagreements as to how to do both. For example: Southwestern Bell and the Arkansas Telephone Association propose to cap rates for "basic local service" for a while, and create a fund to subsidize the costs of phone service in rural parts of the state.

Okay. But the ATA's bill seems to require out-of-state companies to pay for that fund, which is no way to increase competition and bring down rates. And this bill's definition of "basic local service" does not include such amenities as call waiting, personalized ring, auto installation charges, redial, and call return, to name but a few costly items subject to higher rates. Businesses with more than one phone line are also left unprotected. In a way, the ATA's bill could be considered environmental legislation; it seems designed to protect the phone companies' revenue stream.

Meanwhile, the coalition led by the long-distance and cable companies wants to let the federal law take effect; they would allow the state's own Public Service Commission to go on monitoring rates. (The current regulations tend to strangle Southwestern Bell while allowing AT&T and the like to change rates and services quickly and easily.)

Just to complicate matters, this kind of debate is happening all over the country as a result of the new federal law. Some say the thing to do is see how all this plays out elsewhere before Arkansas acts. Not a bad idea. Doing nothing beats doing the wrong thing.

Putting aside all the lawyerspeak and telejargon, here's the object of this complicated game: Encourage competition. It sounds as if the Arkansas Telephone Association prefers competition only if it gets to set the rules. That's no way to run a railroad or open the telephone market. Under the association's bill, the winners of this tussle would be the companies who already control the market in Arkansas and, understandably, aren't eager for more competition. To quote Busi-

Certificate of Service

I, Jennifer A. Lowiec, hereby certify that copies of the foregoing Comments of the Competition Policy Institute were served this 7th Day of July, 1997, to the parties of record.

Jennifer A. Lowiec

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July 7, 1997

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